

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

DANNY BASHAM,

Plaintiff,

vs.

ACTION GROUP STAFFING, a
domestic for profit business corporation,
and
UNARCO INDUSTRIES, LLC, a
foreign limited liability company,

Defendants.

Case No. 15-CV-373-RAW

(Wagoner County District Court
Case No. CJ-2015-0298)

PLAINTIFF'S MOTION TO REMAND

COMES NOW, the Plaintiff, Danny Basham, moves this Court for an Order remanding this case back to Wagoner County District Court in accordance with 28 U.S.C. § 1441 & 1445—both of which the Defendants violated in removing this case to federal court. Plaintiff submits the following in support:

1. Plaintiff filed this case in the District Court of Wagoner County on August 27, 2015, alleging multiple federal and state law claims surrounding the Defendants' termination of Plaintiff's employment including a claim for workers' compensation retaliation.
2. On September 28, 2015, Defendant Unarco filed a Notice of Removal to the United States District Court for the Eastern District of Oklahoma invoking federal question jurisdiction. 28 U.S.C. § 1331.

3. On October 2, 2015, Defendant AGS separately filed a Notice of Removal invoking federal question jurisdiction¹.

I. DEFENDANTS IMPROPERLY REMOVED PLAINTIFF'S CASE

A defendant may not remove a case in violation of 28 U.S.C. 1445, which provides a list of “nonremovable actions.” One of which is any claims that arise under workmen’s compensation laws. 28 U.S.C. 1445(c). When a case is removed that contains one of the nonremovable actions, the entire case must be remanded back to state court as if it were never removed. *See Jackson v. Wal-Mart Stores Texas, LLC*, 925 F.Supp.2d 810 (N.D. Texas 2013) (holding that improper removal of the case requires remand of the entire case); *Pulley v. Bartlett-Collins Co.*, 2006 WL 3386909 (N.D. Okla. 2006) (remanding an entire wrongful termination case that alleged both Title VII claims and workers’ compensation law claims).

Both Defendants in this case have removed Plaintiff’s claim despite acknowledging in both of their notice of removals that Plaintiff has alleged a retaliatory discharge claim that is governed by Oklahoma’s Workers Compensation laws. In addition to this claim, Plaintiff has alleged numerous Title VII and ADEA claims that all arise under the same facts of wrongful discharge. Plaintiff does not dispute that this Court has federal question jurisdiction over the federal claims. However, to force Plaintiff to litigate the federal claims in federal court and the state claims in state court when all of the claims relate to common

¹ Defendant Unarco sought to sever the claims unilaterally by leaving the workers’ compensation claim in state court. This, however, is procedurally impossible as 28 U.S.C. 1441 places the power of severing a case in the hands of a judiciary—not a defendant. Defendant AGS correctly noted in its Notice of Removal that Defendant Unarco incorrectly sought to sever Plaintiff’s claims.

facts will set forth poor judicial economy and set up the Plaintiff for potentially inconsistent outcomes. *Id.* (“The policy considerations of judicial economy and Plaintiff’s choice of forum for the entire case outweigh the right to remove the federal claim . . .”).

II. CONCLUSION

WHEREFORE, Plaintiff requests this Court Remand this entire case back to Wagoner County District Court, pursuant to 28 U.S.C. 1441 & 1445. Plaintiff further requests this Court issue and Order requiring Defendants to pay just costs and actual expenses, including attorney fees, that have been incurred as a result of the removal, pursuant to 28 U.S.C. §§ 1447(c).

Respectfully submitted,

s/Jeff Laird

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CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing instrument was: (✓) mailed via U.S. Mail; () certified, with return receipt requested; () hand delivered; and/or () transmitted via facsimile this 20 day of October, 2015 to the following:

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s/Jeff Laird

Jeff Laird